

**SOAH DOCKET NO. 582-16-1820
TCEQ DOCKET NO. 2015-1221-PST-E**

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; Petitioner,	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
VS.		
JOE'S & CHO, INC. DBA JOES FUTURE FOOD MART, Respondent.		

RESPONDENT'S DISCOVERY REQUESTS TO THE EXECUTIVE DIRECTOR

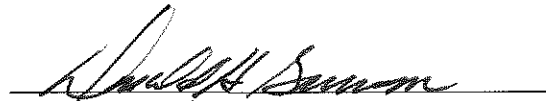
TO: The Executive Director of the Texas Commission on Environmental Quality, by and through its attorney of record, Jake Marx, Office of Legal Services, MC-175, P.O. Box 13087, Austin, Texas 78711-3087.

COMES NOW Respondent, Joe's & Cho, Inc. d/b/a Joes Future Food Mart, and pursuant to the Texas Rules of Civil Procedure, hereby requests that the Executive Director of The Texas Commission on Environmental Quality answer under oath the following interrogatories, and produce for inspection and copying the documents and other tangible things described in the following requests for production. Any attachments to these discovery requests are deemed a part of the discovery requests themselves.

In accordance with the Texas Rules of Civil Procedure, these written discovery responses are due not later than 30 days after service of these requests. Production of documents may be made by providing copies at the office of Grissom & Thompson, 509 West 12th Street, Austin, TX 78701

Respectfully submitted,

GRISSOM & THOMPSON

A handwritten signature in cursive script, appearing to read "William W. Thompson, III", is written over a horizontal line.

William W. Thompson, III

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I. DEFINITIONS

For purposes of these discovery requests, the terms used herein shall have the following meanings:

1. "Document" or "documents" shall be construed in their broadest sense and shall mean and include all written, printed, typed, recorded, or graphic materials of any and every kind and description, including computer and other electronic records, photographs, videotape, and sound recordings, both originals and copies, and all supplements, attachments, and appendices thereto, that are in the possession, custody, or control of the TCEQ. The terms "possession, custody, and control" shall have the meaning designated in TEX. R. CIV. P. 192.7(b).

2. "You," and "Your" means the Executive Director of the TCEQ and all persons acting for, at the request of, or on behalf of the Executive Director.

3. "And" and "or" shall mean and/or, if such a construction brings within the scope of these written discovery requests any information, response, or document that would not be included if construed otherwise.

4. Each of the words "each," "any" and "all," shall mean each, any, and all.

5. "Person" or "persons" shall mean any individual, partnership, association, corporation, joint venture, firm, proprietorship, agency, board, authority, commission, governmental entity or instrumentality, trust, contractor, or other legal or business entity.

6. "Communication" shall mean and include every manner or means of disclosure, transfer, or exchange of information, whether oral, written, by document, face-to-face, by telephone, mail, personal delivery, electronic mail, or otherwise.

7. "Statement" and/or "witness statement" shall have the meaning designated in TEX. R. CIV. P. 192.3(h).

8. "TCEQ" or the "Commission" shall mean the Texas Commission on Environmental Quality and shall also mean, as appropriate, the predecessor agencies to the TCEQ, and, as appropriate, any representatives of these agencies.

9. The "Executive Director" or "ED" shall mean the Executive Director of the TCEQ.

10. The "Facility" shall mean the store located at 14225 Miller Avenue, Fort Worth, Tarrant County, Texas.

11. The "Respondent" shall mean the respondent named in this enforcement action, Joe's & Cho, Inc. d/b/a Joes Future Food Mart.

II. INSTRUCTIONS

1. The TCEQ's procedural rule found at 30 TEX. ADMIN. CODE § 80.151 provides that discovery shall be conducted according to the Texas Rules of Civil Procedure, unless Commission rules provide or the judge orders otherwise. Accordingly, these discovery requests shall be answered in accordance with the Texas Rules of Civil Procedure and SOAH Order No. 1.

2. The answers to interrogatories shall be preceded by the interrogatory and shall be fully and separately answered and signed and verified under oath by a person authorized to do so by the Executive Director, as required by TEX. R. CIV. P. 197.

3. If you reasonably maintain that any of the following discovery requests seek information that is privileged, or if you object to a request on other legal grounds, either in whole or in part, to the extent reasonable under the circumstances respond to all requests, or portions thereof, that you do not object to or assert a claim of privilege. The raising of an objection or assertion of a privilege to a portion of a discovery request does not relieve you of the duty to respond to the remainder of the discovery request. The procedure for raising an objection, asserting a privilege, and responding to any request shall be governed by the Texas Rules of Civil Procedure, more specifically TEX. R. CIV. P. 193.

4. You are under a continuing duty to promptly supplement your answers to these written discovery requests in accordance with TEX. R. CIV. P. 193.5.

5. Requests for Production shall be answered in accordance with TEX. R. CIV. P. 196. Any document or other tangible thing that is subject to a request for production, including all documents in Your possession, custody, or control as defined in Definition Nos. 1 and 2 of these Written Discovery Requests, shall be produced in accordance with Rule 196 of the Texas Rules of Civil Procedure. Specifically, all responsive documents or other tangible things shall be produced as they are kept in the usual course of business or organized and labeled to respond to a specific request for production. If a document produced for one request is responsive to another request, it is acceptable to describe with sufficient particularity what document is responsive and where the document has been previously produced. If documents or other tangible things are produced as they are kept in the ordinary course of business, you are requested to label each document with the number of the request for which it is responsive.

6. If a document responsive to these discovery requests is no longer in your possession for any reason, please describe the document including the title or type of document, author, subject matter, any recipient, and date, as well as indicating the reason for no longer possessing the document (e.g., loss, destruction) and/or who currently possesses the document.

7. No discovery request, or portion thereof, shall limit the scope of any other discovery request, or portion thereof, unless such limitation is specifically stated in these requests.

8. If you object to any portion of a Request, please provide all information responsive to any portion of the Request to which you do not object.

9. If you object that a term or phrase is vague, ambiguous, or indefinite, then provide your understanding of the term or phrase and respond accordingly.

10. If you object to any Request on the ground that it is too broad, please provide all information responsive to any portions of the Request that you concede is relevant or reasonably calculated to lead to the discovery of admissible evidence.

11. For any Request which is objected to on the ground of privilege or the work product doctrine, please provide the following information:

- a. the basis for the objection sufficient to establish the privilege or doctrine you assert;
- b. a brief identification and description of the withheld information or matter to the extent that it can be done without violating such privilege or doctrine;
- c. the identity of an individual, other than your attorneys, having knowledge of the factual basis asserted for the privilege or doctrine; and
- d. provide a privilege log within 10 days of the date of service of your discovery responses.

12. These discovery requests shall be broadly construed to bring within the scope of a request any responsive document or answer that might be excluded as a result of narrower construction. Specifically, unless the clear meaning or context otherwise requires, words in the masculine include the feminine, and vice versa, words in the singular include the plural, and vice versa, and past tense includes the present tense, and vice versa. For example, if a request asks you to "identify the owner," the present owner and past owners, if any, should be identified.

13. "Describe" means to give a complete and full description concerning the matter about which the inquiry is made, including the full name, address, and telephone number(s) of the person(s) involved, dates, times, places, and other particulars, including all relevant documents and observations, which make the answers to these written discovery requests fair and meaningful.

14. To "identify" an individual means to state the following about that individual: (i) the person's full name; (ii) the person's job title or former job title; (iii) the person's job (or former job) duties and responsibilities; (iv) the individual's superior(s); (v) current or last known telephone number(s); and (vi) current or last known business and home addresses.

15. To "identify" a person as defined herein other than an individual means to provide the following information: (i) the entity's full and correct legal name; (ii) the nature of the entity's structure and/or organization; (iii) the address and telephone number of its principal offices and, if applicable, the state in which it is incorporated; and (iv) its principal line(s) of business or activity.

16. To "identify" an act, event, occurrence, or communication means the following: (i) to state its date; (ii) to identify the persons that were parties to and/or witnesses of the act, event, occurrence, or communication; (iii) to describe where and how it took place; and (iv) to identify any document that constitutes or refers to such act, event, occurrence, or communication.

17. To "identify" a document means the following: (i) to identify all files in which it and all copies of it are found; (ii) to identify its author; (iii) to identify its addressees, if any; (iv) to identify those persons who received a copy thereof; (v) to identify its current custodian or the person that had last known possession, custody, or control thereof; (vi) to state the date of its preparation; and (vii) to state its general subject matter giving a reasonably detailed description thereof.

18. To "identify" a procedure(s) or practice(s) means the following: (i) describe the procedure or practice; (ii) describe how the procedure or practice was formulated or developed; (iii) describe what individual(s) participated in the formulation or development of the procedure or practice; and (iv) identify the individual(s) responsible for the formulation or development of the procedure or practice.

19. To "identify" any other tangible thing means the following: (i) to identify what it is by giving a reasonably detailed description thereof; (ii) to state when, where, and how it was made, if applicable; (iii) to identify who made it, if applicable; and (iv) to identify its current custodian or the person that had last known possession, custody, or control thereof.

20. If an interrogatory asks you to "state the basis" of a particular claim, denial, opinion, contention or allegation, such description shall include any legal theory and any application of law to fact you think supports the claim, denial, opinion, contention, or allegation.

III. DISCLOSURES

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose to Respondent at the office of the undersigned counsel for Respondent, within thirty (30) days of service of this request, the information or material described in Rule 194.2 (a)–(k).

IV. INTERROGATORIES

INTERROGATORY NO. 1:

Please identify all witnesses you intend to call to testify at the evidentiary hearing regarding this enforcement matter in accordance with TEX. R. CIV. P. 192.3(d).

RESPONSE:

INTERROGATORY NO. 2:

Please identify each person with whom you have consulted, or from whom you have sought expert advice relating to the matter of this case and who has not been identified in response to Requests for Disclosure, if such consultant's or expert's work product forms the basis either in whole or in part of the opinions of any expert you anticipate calling or may call as a witness.

RESPONSE:

INTERROGATORY NO. 3:

Please identify each person who served on any enforcement or screening committee which reviewed this case.

RESPONSE:

INTERROGATORY NO. 4:

Please identify all persons who participated in determining the proposed penalty amount found in the Executive Director's Preliminary Report and Petition.

RESPONSE:

INTERROGATORY NO. 5:

Please identify all documents utilized by the commission in determining the amount of the penalty assessed.

RESPONSE:

INTERROGATORY NO. 6:

Please explain in detail how you determined the base penalty amount.

RESPONSE:

INTERROGATORY NO. 7:

Please explain in detail why you believe Respondent is liable for an administrative penalty of \$63,000.00, in this enforcement action.

RESPONSE:

INTERROGATORY NO. 8:

Identify the investigator who performed the investigation of the Facility conducted on or about June 11, 2015.

RESPONSE:

INTERROGATORY NO. 9:

State each fact that supports your contention that Respondent failed to monitor its USTs for releases at a frequency of at least once every month.

RESPONSE:

V. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please produce all documents and/or tangible things prepared by any consulting expert identified in Interrogatory No. 2.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:

Please produce all documents and/or tangible things which were used in any way, however insignificant, to prepare your responses to the preceding Interrogatories and or which are otherwise mentioned in your responses, unless produced in response to another Request for Production.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:

Please produce all documents identified in or responsive to Interrogatory No. 5.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4:

Produce any and all documents contained in any enforcement file related to Respondent.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:

Produce all documents that pertain to Respondent which have been compiled by the Regional Office. This Request for Production includes but is not limited to producing any and all Regional Inspection Reports.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6:

Please produce all documents that support the conclusions found in all of the Penalty Calculation Worksheets attached to the Executive Director's Preliminary Report and Petition.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:

Please produce all photographs and videotapes of the Facility which are in your possession.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8:

Please produce all e-mails or other documents which reflect any discussions or communications regarding Respondent.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9:

Please produce all documents identified in or responsive to Interrogatory No. 7.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

Produce any report(s) from the investigation of the Facility conducted on or about June 11, 2015.

RESPONSE:

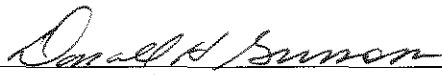
REQUEST FOR PRODUCTION NO. 11:

Produce all documents, data, photos, videos or correspondence which evidence or relate to your contention that Respondent failed to monitor its USTs for releases at a frequency of at least once every month.

RESPONSE:

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been either hand-delivered, sent by U.S. Mail, Certified Mail, Return Receipt Requested, and/or Facsimile Transmission to the following service list on this 13 day of May 2016.


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